

## **Board of Adjustment**



### *Minutes*

City Council Chambers, Lower Level  
November 10, 2009

#### **Board Members Present:**

Garrett McCray, Chair  
Scott Thomas, Vice Chair  
Nicholas Labadie  
Tyler Stradling  
Greg Hitchens

#### **Board Members Absent:**

Judah Nativio (excused)  
Dianne von Borstel (excused)

#### **Staff Present:**

Gordon Sheffield  
Angelica Guevara  
Mia Lozano-Helland

#### **Others Present:**

Dale & Linda Faught  
Others

The study session began at 4:38 p.m. The Public Hearing meeting began at 5:35 p.m. Before adjournment at 6:25 p.m., the following items were considered and recorded.

#### **Study Session 4:38 p.m.**

- A. The study session began at 4:38 p.m. The items scheduled for the Board's Public Hearing were discussed.
- B. Zoning Administrator update – Mr. Sheffield provided a brief synopsis of the November 18<sup>th</sup>, 2009 presentation of the Zoning Code update by Michael Dyett to the Planning and Zoning Board. Some of the highlights were:
  - An increase in densities for multi-family zoning districts.
  - Transit Oriented Development mixed use opportunities.
  - Fundamental land use changes in the single-family residential districts related to setbacks.

#### **Public Hearing 5:35 p.m.**

- A. Consider Minutes from the October 13, 2009 Meeting A motion was made to approve the minutes by Boardmember Stradling and seconded by Boardmember Hitchens. Vote: Passed 5-0 (Nativio and von Borstel absent)
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember Hitchens and seconded by Boardmember Labadie. Vote: Passed 5-0 (Nativio and von Borstel absent)

**Board of Adjustment Meeting  
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**Case No.:** BA09-034 (PLN2009-329)

**Location:** 2210 North Higley Road

**Subject:** Requesting: 1) variances to allow a fence to exceed the permitted height; 2) allow a reduced landscape setback; and 3) reduce the quantity of landscape material for the development of a pump station in the M-1 zoning district.

**Decision:** Approved with conditions

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Hitchens, seconded by Boardmember Labadie to approve BA09-034 on the consent agenda.

- 1. Compliance with the site plan submitted except as modified by the conditions below.*
- 2. Provide shrubs and groundcovers within the right-of-way area located behind the curb and gutter.*
- 3. Compliance with the justification and compatibility statements submitted with this application.*
- 4. Compliance with all requirements of the Development Services, Engineering, Transportation, and Solid Waste Departments.*
- 5. Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

**Vote:** Passed 5-0 (Nativio and von Borstel absent)

**Findings:**

**1.1** There are special conditions that apply to this request. There is an existing pump station that must remain operational at all times during the expansion and replacement of aging equipment. Due to this unique circumstance, the City is forced to construct a new pump station directly south of the existing pump station. The new pump station must be located as close as possible to the existing pump station in order to minimize water service interruptions when the switchover occurs to the new pump station.

**1.2** The site is located within the Falcon Field Airport where the overall uses relate to aviation. There is an existing lease by Hangar One LLC on the site immediately to the west of the existing pump station. Variances were granted in 2007 to allow encroachments into the setbacks and for reduction in foundation base width in order to allow the development of the hangar. The existing depth of the pump station of 55' determined the depth of the proposed pump station. The inability to lease additional area for the pump station due to an existing lease with Hangar One LLC creates a pre-existing condition that is not self-imposed. The provision of full setbacks has a detrimental effect on the buildable area of the pump station and justifies the request for a variance for a reduction in the width of the landscape setback.

**1.3** Due to the site's proximity to the airport, safety concerns related to the creation of bird habitats and the potential for bird strikes with aircraft creates a unique condition that is pre-existing and

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not self-imposed. The safety concerns justify the request for a reduction in landscape quantity.

- 1.4** Due to higher security restrictions in the country, the Utilities Department has established a policy requiring all well and pump station sites to increase the height of the perimeter walls from 8' to 9'6". The security concerns related to an unmanned pump station which provides access to the City's water supply are valid and establish a unique condition that is not self-imposed that does not apply to conventional development.
- 1.5** The variances allow the pump station to be expanded and upgraded in a manner that is consistent with the unique requirements of a pump station and the requirements for development within the Airport. The unique conditions that exist are not self-imposed. The granting of the variances allows the equipment to be upgraded while minimizing water supply interruptions, and provides for increased safety of the City's water supply. For these reasons the variances do not grant any special privileges that could be considered extraordinary or unusual.

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- Case No.:** BA09-035 (PLN2009-00354)
- Location:** 943 North Miller Street
- Subject:** Requesting: 1) a Special Use Permit to allow detached Accessory Living Quarters; and 2) a Variance to allow detached accessory living quarters to encroach into the rear setback in the R1-9 zoning district.
- Decision:** Approval with conditions  
*1. Compliance with the site plan submitted except as modified by the conditions listed below.*  
*2. The accessory living quarters shall not be leased or rented.*  
*3. The accessory living quarters shall be served by the same utility services as the primary dwelling.*  
*4. Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*
- Summary:** The owner, Dale Faught, presented the request and summarized the events to date related to this case. Boardmember Hitchens asked for the widths of the alleys that are adjacent to this property on the east and south sides. It was determined that the east alley is 12' wide, and the south alley is an average of 15'- 6". Ms. Guevara noted that public alleys of 16' or wider are allowed by the Zoning Ordinance to measure the rear yard setback from the center line of the alley. This applies to the south alley only.
- After some discussion regarding the fact that the lot is five sided, the location of the rear yard and possibly two rear yards, Ms. Guevara determined that the rear yard is actually on the east side of the property. Mr. Sheffield further discussed the requested variances, the multiple sides of the lot and the existing angled placement of the residence. Chair McCray summarized that the detached structure was possibly approved as a garage with an encroachment into the setback which may have been allowed in the past for non-livable use.
- After additional discussion, the Board determined the case and circumstances were allowable and a motion to approve followed.
- Motion:** It was moved by Boardmember Labadie, seconded by Boardmember Hitchens to approve BA09-035 with staff conditions.
- Vote:** Passed 5-0 (Nativio and von Borstel absent)
- Findings:**
- 1.1** There are special circumstances that apply to this request that are pre-existing and not self-imposed. The lot is 17,642 sq. ft., almost twice the size of the majority of the lots within the North Miller Estates subdivision. The other lots within the subdivision range between 9,000 and 11,000 sq. ft. The two lots which are of similar area are lot 2 which is 17,333 sq. ft. and lot 79 which is 16,139 sq. ft. There are alleys adjacent to the south and east property lines which are 12' wide and

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help minimize the impact of livable square footage on the adjacent properties. The alleys provide a 12' buffer between the livable square footage of the detached structure and the two single family residence lots on the south side of the alley. To the east of the lot, on the other side of the alley, is the Prehab Stapley School.

- 1.2** Additional unique circumstances exist with this lot that is pre-existing and not self-imposed; it has five sides (technically 6) and is located at the end of a cul-de-sac. The home was constructed by a previous property owner or builder to face the cul-de-sac. The angled placement of the home minimizes the rear yard area. In addition, there is an existing swimming pool in the rear yard that was also constructed by the previous property owner, further limiting the area available for a detached structure. This limits the options for placement of detached buildings on the property forcing the detached structure into the 25' rear setback.
- 1.3** Strict compliance with the Code in requiring the property owner to adhere to the 25' rear setback will deprive the property of privileges enjoyed by other properties in the same zoning district. In this case, even though the lot is almost twice the size of the lots within the subdivision and the R1-9 zoning district, the shape of the lot, the placement of the existing home and swimming pool dictated the location of the detached building.
- 1.4** The variance request does not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.
- 1.5** The accessory living quarters will not be leased or rented. The existing structure is architecturally compatible with the primary home in that it was constructed with the same materials used for the construction of the home. It uses the same utility services as the existing home and the roof area is less than 50% of the roof area of the primary home.
- 1.6** The existing accessory living quarters has established compatibility with surrounding properties by the fact that according to the property owner it has existed on the property for over 40 years without any complaints from the adjacent neighbors. The use of the structure as accessory living quarters, the location of the building, access to the building including its historical presence demonstrate that it is not detrimental to neighbors or public in general and it is compatible with existing uses in the area .

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**Case No.:** BA09-036 (PLN2009-00351)

**Location:** 2155 South Dobson Road

**Subject:** Requesting a Special Use Permit to allow a commercial communication tower to exceed the maximum height permitted in the PF zoning district.

**Decision:** Continuance to the December 8, 2009 meeting

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Hitchens, seconded by Boardmember Labadie to continue BA09-036 to the December 10, 2009 meeting.

**Vote:** 5-0 (Nativio and von Borstel absent)

**Findings:** N/A

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C. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP  
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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